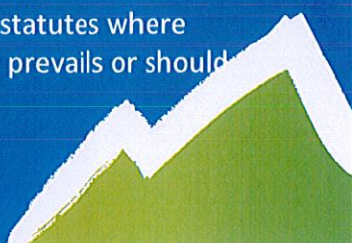
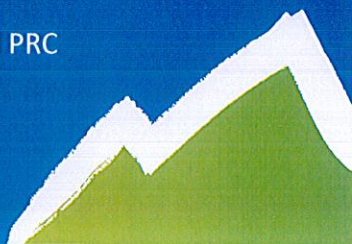




## Overview of Revisions Continued

- Definitions updated; those not referred to within the Code were removed.
  - Title, duties and responsibilities updated.
  - Ensured responsibilities flow through the City Manager for approval when necessary.
  - Updated methods of procurement and other provisions consistent with state law
  - Removed detail and cited appropriate statutes where redundancy was present and state law prevails or should prevail.
- 

## Overview of Revisions Continued

- Specified areas in which procedures would be promulgated to implement Code.
  - Incorporated use of technology with flexible language.
  - Matched Code with current City practices
  - Took out limiting language from Code which would be more suited for a procedures manual in order to provide maximum flexibility. Examples:
    - Formulation of Specifications and PRC
    - Public Notices
    - Small Purchases
- 



## Overview of Revisions Continued

### § 39.14 Small Purchases

- Current Code limits were outdated and contradictory to the State Procurement Code Small Purchase threshold.
- Eliminated the Petty Cash Revolving Fund.
- Revisions follow thresholds established under A.R.S. Title 41, Chapter 23, and will continue to do so as they change.
- Included provision within the Code to utilize local businesses for their small dollar purchases whenever possible or cost advantageous.
- Purchasing Card Usage Procedures are established by Administrative Directive and will be incorporated in procedures manual. References to such procedures in the Code is redundant and have been removed.

## Overview of Revisions Continued

- Referenced State Law under for Types of Contracts that may be utilized by the City.
- Referenced State Law for Contract Clauses: Administration.
- Operational language pertaining to the Procurement of Construction and Professional Services in § 39.25 have been removed.
- Supply Management updated to reflect existing Warehouse Functions.
  - Raised threshold for donations by City Manager approval from an aggregate value of \$5,000 to \$10,000.



## Overview of Revisions Continued

- Expanded explanation of Use of Confidential Information.

Any questions so far?

## Local Vendor Preference



## What is Local Vendor Preference?

- Policy/Ordinance enacted by a legislative body
- Provides bidding preference to a defined group
- Intent is to stimulate a depressed local economy
- Establishes eligibility requirements
- Provides for passive or active certification
- Applicable to solicitations for goods and services

## How to Define Local Preference Eligibility

- Geographic Basis
- Ownership/Management Basis

Plus

- Type of Preference
  - Dollar range
  - Percentage
  - Tie-bid
  - Tiered System



## Purpose of Procurement

*To provide for the fair and equitable treatment of all persons involved in public purchasing by the city in order to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and Integrity.*

## Recent Court Case (2014)

- City of Tucson
  - Adopted a Tiered system for goods and services over \$50K (no professional design or construction) with a \$1M cap.
- Two contract awards totaling \$212K from FY14 spend of \$252M.
- Sued by Goldwater Institute, who prevailed
  - State Constitution Gift Clause
  - Federal Equal Protection Clause
  - Federal Commerce Clause
  - Federal Immunities Clause
- City Management and City Attorney do not recommend local preference policy.



## Alternatives to LVP

- Small Business and DBE Programs
  - Establishment of subcontracting goals (construction)
  - Small purchase programs (goods and services)
  - Preference points (professional design contracts)
- Vendor/Business Outreach Programs
  - Host local Trade Shows and conferences
  - Chamber Mixers, Association Meetings, Presentations
  - Vendor "Office Hours" (ours are every Thursday)
- Education and Training
  - Debriefs for unsuccessful respondents
  - "How To" workshops

Questions?

October 5, 2016

MEMORANDUM TO:           Honorable Mayor and City Council  
THRU:                       Charles P. Potucek, City Manager  
FROM:                      Laura Wilson, Chief Procurement Officer  
SUBJECT:                  Procurement Code Revision Summary

The City of Sierra Vista Purchasing Code follows A.R.S. Title 41, Chapter 23, the Arizona Procurement Code. Since 2008, when the last major revision to our Code took place, there have been many changes to the State of Arizona Procurement Code and the way we conduct procurement operations. Consequently, the City's Purchasing Code has become somewhat outdated and the need for an open and transparent operations manual has become necessary.

This revised Code updates the title of Procurement Manager to Chief Procurement Officer, in accordance with the most current city classification/compensation plan, and eliminates much of the language which is operational in nature by simply incorporating the applicable laws by reference, as appropriate, within our Code. This will alleviate the need to revise our Code each time a change occurs at the State level and will consistently maintain compliance.

To ensure that the city's procurement operations maintain integrity and fairness as it applies to our day-to-day operations, I will develop operational procedures for the City Manager's review/approval which will complement the Sierra Vista Procurement Code and allow us to incorporate and update policies and procedures as needed within the constraints of the law. The operational procedures will be a tool to be utilized as a resource to Council, staff, and the public on the City of Sierra Vista procurement process and best practices. The procedures will be developed for review and approval by the City Manager and will ensure that our operations remain current and within the guiding parameters of Arizona Law while maintaining internal controls and enhancing transparency to the public.

Here is a summary of the major revisions:

- Specified within the Code, areas in which procedures would be created in order to implement the Code operationally.
- Used flexible language which will encourage the use of technology through operational procedures.
- Matched Code language to current City practices where contradictions were present.
  - For example, the Petty Cash fund was eliminated last year and references to that method of procurement were deleted.



- Removed limiting language from the Code which would be more suited for a procedures manual.
  - For example, the small purchasing thresholds in the Code were contradictory to the State Code. Adding the thresholds within a procedure manual would ensure that we are always operating within the law while allowing us to make edits to amounts based on established best practices and administrative directives.
- § 39.14 Small Purchases
  - Included provision within the Code to encourage utilization of local businesses for small dollar purchasing card purchases whenever possible and cost advantageous.
  - Purchasing Card usage procedures are established by Administrative Directive and will be incorporated in procedures manual.
- § 39.19 Types of Contracts
  - Types of contracts that may be used are referenced in the State Code. Specific language was removed and reference to the law was incorporated in order to remain consistent with the laws and allow maximum flexibility should new contract methods be allowed under the law.
- § 39.20 Contract Clauses: Administration
  - Code language was restrictive in nature and did not list all possible clauses. Referenced the law and requires consultation with the City Attorney to establish contract clauses in order to maximize protection of the city's interests.
- Removed § 39.21 Approval of Accounting System and § 39.22 Right to Inspect Plant as those are examples of contract clauses pursuant to § 39.20, above, which may be added to applicable contract documents.
- § 39.56 Use of Confidential Information
  - Enhanced this section in order to elaborate the public's responsibility in requesting that solicitation responses protect confidential information, if any. It is important for the vendor's to understand that all information is considered public information unless the procedure to protect it is followed and accepted by the City in accordance with State Law.

The majority of the remaining edits are administrative in nature and simply clean up the existing document.

I have been approached a few times referencing the topic of Local Vendor Preference (LVP) Policies. I will take an opportunity during the Work Session to conduct a brief overview of what a Local Vendor Preference Policy is, what would need to be taken into consideration in order to implement such a policy, explain the role and purpose of the Procurement Division, will give an overview of the City of Tucson lawsuit by the Goldwater Institute through the Pima County Superior Court which resulted in the demise of their LVP Program, provide some alternatives to an LVP policy, and Procurement's position on LVP Programs. It will be a short brief on an important topic that I hope you find beneficial. Should you like additional information or position papers for your consideration, I will be happy to furnish them to you at your request.

## **CHAPTER 39: PROCUREMENT CODE**

### ***General Provisions***

- 39.01 Purpose; Scope
- 39.02 Definitions
- 39.03 Chief Procurement Officer

### ***Public Procurement Regulations***

- 39.10 Source Selections and Contact Information
- 39.11 Competitive Sealed Bidding
- 39.12 Competitive Sealed Proposals
- 39.13 (Reserved)
- 39.14 Small Purchases
- 39.15 Sole Source Procurement
- 39.16 Emergency Procurements
- 39.17 Cancellation of Bid or Proposal Invitation
- 39.18 Qualifications, Responsibilities of Bidders and Prospective Contractors
- 39.19 Types of Procurement Contracts
- 39.20 Contract Clauses; Administration
- 39.21 Reserved
- 39.22 Reserved
- 39.23 Reporting Anti-Competitive Practices
- 39.24 Formulation of Specification; Project Review Committee
- 39.25 Procurement of Construction, Architect, Engineer and Land Surveying Services
- 39.26 (Reserved)
- 39.27 Allowability of Reimbursing Costs
- 39.28 Supply Management
- 39.29 Cooperative Purchasing
- 39.30 Small and Disadvantaged Businesses Policy

### ***Legal and Contractual Remedies***

- 39.40 Authority to Resolve Protested Solicitations and Awards
- 39.41 Authority to Debar or Suspend
- 39.42 Authority to Resolve Contract and Break of Contract Controversies



## ***Ethics in Public Contracting***

### **Part A. Standards of Conduct**

- 39.50 General Standards of Ethical Conduct
- 39.51 Criminal Sanctions
- 39.52 Employee Conflict of Interest
- 39.53 Gratuities and Kickbacks
- 39.54 Contingent Fees Prohibited
- 39.55 Contemporaneous Employment Prohibited
- 39.56 Use of Confidential Information
- 39.57 Waiver from Certain Prohibitions

### ***Part B. Remedies***

- 39.60 Civil and Administrative Remedies Against City Employees Who Breach Ethical Standards
- 39.61 Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards
- 39.62 Recovery of Value Transferred or Received in Breach of Ethical Standards

## GENERAL PROVISIONS

### § 39.01 PURPOSE; SCOPE.

- (A) *Purpose.* The purpose of this chapter is to provide for the fair and equitable treatment of all persons involved in public purchasing by the city, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.
- (B) *Application.* This chapter applies to contracts for the procurement of supplies, services, and construction, entered into by the city after the effective date of this chapter, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by a public agency for public purchasing, irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal laws and regulations. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement that is otherwise consistent with law.
- (C) *Unauthorized purchases.* Notwithstanding the provisions of § 39.03(D), any purchase ordered or contract made contrary to the provisions in this chapter shall not be approved by city officials, and the city shall not be bound thereby. Failure of a city employee to comply with the provisions of this paragraph may result in disciplinary action, termination, and/or pecuniary liability for misappropriation of city funds.

('76 Code, § 3-8-1) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### § 39.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ARCHITECT, ENGINEER, and LAND SURVEYING SERVICES.** Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the state, which are required to be performed or approved by a person licensed, registered, or certified to provide such services.

**BID.** An offer in response to a solicitation, IFB (Invitation for Bid).

**BRAND NAME OR EQUAL SPECIFICATION.** A specification that uses one or more manufacturers' brand names, with identifying model numbers, used in a performance specification to describe the standards of quality, performance, and other characteristics needed to meet the requirements of the end user.

**BRAND NAME SPECIFICATION.** A specification limited to a name, term, symbol, design, or any combination thereof used in specifications to describe a product by a unique identifier specific to a particular seller or manufacturer that distinguishes it from its competition.

**BUSINESS.** Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

**CONFIDENTIAL INFORMATION.** Any information which is available to an employee only because of the employee's status as an employee of the city, and is not a matter of public knowledge or available to the public on request.



**CONSTRUCTION and/or CONSTRUCTION PROJECTS.** The process of building, altering, repairing, improving, or demolishing any public infrastructure or facility, including any public structure, public building, or other public improvements of any kind to real property. It does not include the routine operation, routine repair or routine maintenance of any existing public infrastructure facility, including any structures, buildings, or real property.

**CONTRACT.** 1. An obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act. The essential elements of a contract are an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent; legality of purpose; and definiteness. 2. A legally binding promise, enforceable by law. 3. An agreement between parties with binding legal and moral force, usually exchanging goods or services for money or other considerations.

**CONTRACT MODIFICATION.** Any written alteration in specifications, delivery point, frequency of delivery, period of performance, price, quantity, or other provisions of the contract, accomplished by mutual agreement of the parties to the contract.

**COOPERATIVE PURCHASING.** 1. The action taken when two or more entities combine their requirements to obtain advantages of volume purchases, including administrative savings and other benefits. 2. A variety of arrangements, whereby two or more public procurement entities (or agencies) purchase from the same supplier or multiple suppliers using a single Invitation for Bids (IFB) or Request for Proposals (RFP). 3. Cooperative procurement efforts may result in contracts that other entities may “piggyback.”

**DISADVANTAGED BUSINESS.** A business owned or controlled by a majority of persons who are determined to have been deprived of the opportunity to develop and maintain a competitive economic position because of specified social disadvantage. (Harney, 1992). Reference CFR § 124.105.

**EMPLOYEE.** An individual drawing a salary or wages from the city, whether elected or not; any non-compensated individual performing personal services for the city or any department, agency, commission, council, board, or any other entity established by the executive or legislative branch of the city.

**GRATUITY.** Anything of more than nominal value given with the hope of obtaining influence. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

**INVITATION FOR BIDS.** All documents used to solicit competitive or multi-step sealed bids.

**PROCUREMENT.** The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction. It includes all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. It also includes the proper disposal of surplus supplies, equipment, or real property.

**PUBLIC AGENCY.** A public entity subject to or created by the city.

**PUBLIC NOTICE.** The distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods include publication in newspapers of general circulation, electronic or paper mailing lists, and web site(s) designated by the city and maintained for that purpose.

**REQUESTS FOR PROPOSALS.** The document used to solicit proposals from potential providers (proposers) for goods and services. Price is usually not a primary evaluation factor. Provides for the negotiation of all terms, including price prior to contract award. May include a provision for the negotiation of best and final offers. May be a single-step or multi-step process. Introduced in the Armed Services Procurement Act of 1962 as well as by the Competition in

Contracting Act of 1984.

**REQUESTS FOR QUOTATIONS.** Purchasing method generally used for small orders under a certain dollar threshold. A request is sent to suppliers along with a description of the commodity or services needed and the supplier is asked to respond with price and other information by a predetermined date. Evaluation and recommendation for award should be based on the quotation that best meets price, quality, delivery, service, past performance, and reliability.

**RESPONSIBLE BIDDER or OFFEROR.** A person, contractor or business entity who is fully capable to meet all of the requirements of the solicitation and subsequent contract. Must possess the full capability, including financial and technical, to perform as contractually required.

**RESPONSIVE BIDDER.** A person, contractor or business entity who has submitted a bid or request for proposal that fully conforms in all material respects to the IFB/RFP and all of its requirements, including all form and substance.

**SERVICES.** The furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include employment agreements or collective bargaining agreements.

**SMALL BUSINESS.** A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

**SPECIFICATION.** Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

**SUPPLIES.** All tangible items purchased or consumed by an entity.

('76 Code, § 3-8-1-B) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.03 CHIEF PROCUREMENT OFFICER.**

#### *(A) Establishment and appointment.*

- 1) *Procurement Function.* The City Manager is authorized to establish an appropriate department or division to carry out city procurement functions.
- 2) *Chief Procurement Officer.* The City Manager shall designate a Chief Procurement Officer, who shall be the city's principal public procurement official.
- 3) *Bond.* The Chief Procurement Officer shall have an official bond, to be approved by the City Attorney, in an amount determined appropriate by the City Attorney in consultation with the City Manager.

#### *(B) Authority and duties.*

- 1) *Principal public procurement official.* The Chief Procurement Officer shall serve as the central procurement officer for the city.
- 2) *Duties.* Except as otherwise provided in this chapter, and subject to the supervision of the City Manager, the Chief Procurement Officer shall:



- a. Procure or supervise the procurement of all supplies, services, and construction needed by the city.
  - b. Exercise direct supervision over the city's central stores and general supervision over all other inventories of supplies belonging to the city.
  - c. Sell, trade, or otherwise dispose of surplus supplies belonging to the city.
  - d. Establish and maintain programs for specifications development, contract administration, and inspection and acceptance, in cooperation with the public agencies using the supplies, services, and construction.
  - e. Ensure compliance with this code and implementing procedures by reviewing and monitoring city procurements by any designee, department, agency, or official delegated authority under paragraph (D) of this section.
  - f. Buy, sell, trade or lease real property.
- 3) *Authority to adopt operational procedures.* Consistent with this chapter, and with the approval of the City Manager, the Chief Procurement Officer may adopt operational procedures relating to the execution of his /her duties. (These may be set forth in a municipal procurement handbook, or other administrative vehicle(s).)
- (C) *Centralized procurement authority.* Except as otherwise provided in this chapter, all rights, powers, duties, and authority relating to the procurement of supplies, services, and construction, and the management, control, warehousing, sale, and disposal of supplies, services, and construction are vested in the Chief Procurement Officer.
- (D) *Delegation.* Subject to these regulations and the authority vested by the City Manager, the Chief Procurement Officer may delegate authority to designees, or to any department, agency, or official.

('76 Code, § 3-8-2) (Ord. 903, passed 7-23-92; Am. Ord. 1005, passed 3-28-96; Am. Ord. 2008-012, passed 6-12-08)

## PUBLIC PROCUREMENT REGULATIONS

### § 39.10 SOURCE SELECTION AND CONTRACT FORMATION.

- (A) *Source selection.* Unless otherwise authorized by law, all city contracts shall be awarded under one of the following sections:
- (1) Competitive sealed bidding, IFB (Invitation for Bids) § 39.11.
  - (2) Competitive sealed proposals, RFP (Request for Proposals) § 39.12.
  - (3) Small purchases, § 39.14.
  - (4) Sole source procurement, § 39.15.
  - (5) Emergency procurements, § 39.16.
  - (6) Procurement of construction, architect, engineer, and land surveying services, § 39.25.
  - (7) Supply management, § 39.28.
- (B) *Special procurements.* Notwithstanding the provisions of paragraph (A), the Chief Procurement Officer may initiate a procurement using an alternate method of source selection, as provided in Title 41, Chapter 23, Article 3 of the Arizona Procurement Code. A written determination of the basis for the procurement and for

the selection of the particular contractor shall be included by the Chief Procurement Officer in the contract file.

(Ord. 2008-012, passed 6-12-08)

**§ 39.11 COMPETITIVE SEALED BIDDING – IFB (Invitation for Bids).**

- (A) *Conditions for use.* All contracts to the city, to include all sales of personal property which has become obsolete and unusable, shall be awarded by competitive sealed bidding, except as otherwise provided in § 39.10 of this chapter. Contracts for construction shall be awarded by competitive sealed bidding, as defined in A.R.S. Title 41, Chapter 23 (Arizona Procurement Code) and A.R.S. Title 34 (Public Buildings and Improvements) except as otherwise provided in § 39.25 of this chapter.
- (B) *Invitation for bids.* An invitation for bids shall be issued, and shall include specifications and all contractual terms and conditions applicable to the procurement. The Chief Procurement Officer shall solicit sealed bids from responsible prospective suppliers who have requested their names to be added to a "Bidders' List" which the Chief Procurement Officer shall maintain, by sending them a copy of the newspaper notice or other notice as will acquaint them with the proposed purchase or sale, either electronically or via mail. Invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.
- (C) *Public notice.* Adequate public notice of the invitation for bids shall be given a reasonable time, but not less than 14 calendar days prior to the date set forth therein for the opening of bids, unless otherwise allowed by state law. Notices shall meet all state Procurement Code requirements, and procedures shall be identified through administrative procedures which will be periodically updated and made available to prospective bidders.
- (D) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The amount of each bid, and other relevant information as the Chief Procurement Officer deems appropriate, together with the name of each bidder, shall be recorded. This record shall be open to public inspection. The bids shall not be open for public inspection until after a contract is awarded. To the extent the bidder clearly designates, in writing, any trade secrets or other proprietary information, using the term "confidential" contained within the bid documents, and the City agrees, shall remain confidential, in accordance with Arizona State Law.
- (E) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.
- (F) *Correction or withdrawal of bids; cancellation of awards.* Correction or withdrawal of inadvertently erroneous bids before bid opening, or cancellation of awards or contracts, may be permitted where deemed appropriate by the Chief Procurement Officer. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the city or fair competition shall be permitted. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Chief Procurement Officer.



- (G) *Award.* The contract shall be awarded, with reasonable promptness by appropriate written notice, to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid for a construction project exceeds available funds, as certified by the city's budget officer, the Chief Procurement Officer is authorized, when time or economic considerations preclude re-solicitation of work of a reduced scope, to direct an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds.
- (H) *Multi-step sealed bidding RSoQ (Request for Statement of Qualifications).* When it is considered impractical to prepare initially a purchase description to support an award based on price, a RSoQ (Request for Statement of Qualifications) may be issued as defined in A.R.S., Title 41, Chapter 23.
- ('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.12 COMPETITIVE SEALED PROPOSALS – RFP (Request for Proposals).**

- (A) *Conditions for use.* When the Chief Procurement Officer determines that the use of competitive sealed bidding (IFB) is neither practicable nor advantageous to the city, a contract for materials or services may be entered into by use of the competitive sealed proposals (Request For Proposals - RFP) method. This section does not apply to procurement of construction, construction services, or specified professional services pursuant to § 39.25. Construction services shall be procured pursuant to § 39.16 or § 39.25.
- (B) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in § 39.11(C) of this chapter.
- (C) *Receipt of proposals.* Proposals shall be handled so as to avoid disclosure of the contents to competing offerors during the process of negotiation. Proposals shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the request for proposals. Prices shall not be disclosed at this time. A register of proposals shall be prepared containing the name of each offeror, and shall be open for public inspection. The proposal shall be open for public inspection only after contract award.
- (D) *Evaluation factors.* The request for proposals shall state the relative importance of price and other evaluation factors. No other factors or criteria may be used in the evaluation.
- (E) *Discussion with responsible offerors and revisions to proposals.* As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
- (G) *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined to be most advantageous to the city, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. Written notice of the award of a contract to the successful offeror shall be promptly given to all offerors.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.13 [RESERVED]**

### **§ 39.14 SMALL PURCHASES.**

- A. *General.* Any contract not exceeding the aggregate dollar amount prescribed in A.R.S. § 41-2535, may be made in accordance with the Arizona Procurement Code, A.R.S. Title 41 Chapter 23. Contract requirements shall not be artificially divided or fragmented, otherwise described as a “split-purchase” so as to circumvent the source selection procedures in order to constitute a small purchase under this subchapter.
- B. *Small purchases.* For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, the Chief Procurement Officer, or his/her designated representative(s) shall issue a request for quotation unless any of the following apply:
  - 1. The purchase can be made utilizing a cooperative agreement, subject to the provisions of § 39.29, Cooperative Purchasing.
  - 2. The purchase is not expected to exceed \$10,000.00, or the amount listed within the Arizona State Procurement Code, Chapter 23, which shall prevail. Operational procedures and best practices will be utilized for procurements.
  - 3. The Chief Procurement Officer makes a determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.
- C. *Purchasing cards.* Subject to the provisions of § 39.03, the Chief Procurement Officer may issue, to elected officials, and selected city employees by Department or Division Head request, a purchasing card for the purpose of making routine, small dollar, off-the-shelf purchases of supplies and services within designated limits. Purchasing card users are encouraged to utilize local businesses for their small dollar requirements whenever possible or cost advantageous. The Chief Procurement Officer shall prepare operational procedures to enable the appropriate use of purchasing cards, and to prevent abuse thereof.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 1005, passed 3-28-96; Am. Ord. 1126, passed 2-8-01; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.15 SOLE SOURCE PROCUREMENT.**

A contract may be awarded without competition when the Chief Procurement Officer determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Chief Procurement Officer shall require the submission of cost or pricing data in connection with an award under this section, and shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record, and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, and the identification number of each contract file.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.16 EMERGENCY PROCUREMENTS.**

Notwithstanding any other provisions of this chapter, the Chief Procurement Officer may make or authorize others to make emergency procurements of supplies, services or construction items when there exists a threat to public health, welfare or safety; provided that the emergency procurements shall be made with the competition as is



practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be prepared by the city official making the purchase, and shall be included in the contract file, and such purchases will require the approval of the City Manager.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 1005, passed 3-28-96; Am. Ord. 2008-012, passed 6-12-08)

#### **§ 39.17 CANCELLATION OF BID OR PROPOSAL INVITATION.**

An invitation for bids, a request for proposals or other solicitations may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is for good cause and in the best interests of the city. The reasons therefore shall be made part of the contract file.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

#### **§ 39.18 QUALIFICATIONS, RESPONSIBILITIES OF BIDDERS AND PROSPECTIVE CONTRACTORS.**

##### **(A) *Responsibility of bidders and offerors.***

- (1) *Determination of non-responsibility.* A written determination of non-responsibility of a bidder or offeror shall be made in accordance with the provisions of Rule R2-7-B313, Chapter 23 of the Arizona Procurement Code. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to the bidder or offeror.
- (2) *Right of nondisclosure.* Confidential information furnished by a bidder or offeror pursuant to this subchapter shall not be disclosed by the city outside of the office of the Chief Procurement Officer, or using agency, without prior written consent by the bidder or offeror. For confidential information to be protected, respondents must clearly designate, in writing, any trade secrets or other proprietary information, using the term "confidential" within the response, and the City must agree to keep such information protected, in accordance with Arizona State Law.

##### **(B) *Substantiation of offered prices.*** A prospective contractor shall have the obligation of providing information or certifications as to the completeness and accuracy of the pricing data submitted with all proposals in accordance with administrative procedures established by the Chief Procurement Officer.

- (1) *Required submissions relating to change order, amendments, or contract modifications.* A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, except that the submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when it is determined by the Chief Procurement Officer that the requirements of this division may be waived, and the determination states the reasons for the waiver.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

#### **§ 39.19 TYPES OF CONTRACTS.**

- (A) *General authority.* Subject to the limitations of this subchapter, any type of contract which is appropriate to the procurement and which will promote the best interests of the city may be used, provided said procurement conforms with A.R.S. § 41-2544.
- (B) *Multi-term contracts.*
- (1) *Determination and Specified Period.* Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the city, provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore. The Chief Procurement officer will determine that a multi-term contract is in the best interests of the City.
  - (3) *Cancellation; unavailability of funds in succeeding fiscal periods.* When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for the purposes.
- (C) *Multiple source contracting.*
- (1) *General.* A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the city's actual requirements is limited by the provisions of A.R.S. § 47-2306(A), the Arizona Uniform Commercial Code.
  - (2) *Limitations on use.* A multiple source award may be made when awarded to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple source award shall be made in accordance with the provisions of § 39.11, 39.12, 39.14, and 39.16 of this chapter, as applicable, and shall be procured under the provisions of A.R.S. § 34-603. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of the bids.
  - (3) *Contract and solicitation provisions.* All eligible users, i.e., departments, divisions, and cooperative provisions, if any, of the contract shall be named in the solicitation. It shall be mandatory that the actual requirements of the users that can be met under the contract be obtained in accordance with Arizona State Law.
  - (4) *Intent to use.* If a multiple source award is anticipated prior to issuing a solicitation, the city shall indicate its intent within the solicitation documents, along with the criteria for award.
  - (5) *Determination required.* The Chief Procurement Officer will make a determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

## **§ 39.20 CONTRACT CLAUSES; ADMINISTRATION.**



- (A) (1) *Contract clauses.* All city contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Chief Procurement Officer, after consultation with the City Attorney, may issue clauses appropriate for supply, service, or construction contracts, in accordance with Arizona State Law.
- (2) *Noncollusion/restraint of trade or commerce.* The Chief Procurement Officer shall, at his or her discretion, require non-collusion affidavits as provided by A.R.S. § 34-253, and, if applicable, shall fully comply with A.R.S. § 34-251 through § 34-258. Failure of any respondent to return a signed affidavit, as requested, is grounds for disqualification of its quote, bid, or proposal.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.23 REPORTING ANTI-COMPETITIVE PRACTICES.**

When for any reason, collusion or other anti-competitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the State Attorney General and the City Attorney.

('76 Code, § 3-8-3) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.24 FORMULATION OF SPECIFICATIONS.**

- (A) *Specifications.* All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the city's needs, and shall not be unduly restrictive. Brand name or equal specifications may be used when the Chief Procurement Officer determines that the use of a brand name or equal specification is in the city's best interests. The Chief Procurement Officer shall develop administrative procedures more specifically outlining the manner in which specifications shall be developed, said procedures to comply with City code and state law.

('76 Code, § 3-8-4) (Ord. 903, passed 7-23-92; Am. Ord. 1005, passed 3-28-96; Am. Ord. 1126, passed 2-8-01; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.25 PROCUREMENT OF CONSTRUCTION, ARCHITECT, ENGINEER AND LAND SURVEYING SERVICES.**

Provided the cost of the project exceeds the statutorily established amount, the procurement of both horizontal and vertical construction projects shall be governed by state law. The Chief Procurement Officer shall consult the Arizona Revised Statutes (Title 34 or Title 41, Chapter 23) when procuring goods and services related to construction.

When the cost of a construction project falls below the statutorily established amount, the project shall be procured pursuant to the provisions of this Code.

Alternative delivery methods, such as design bid build, construction manager at risk, design build, and job order contracting, may be utilized for applicable purchases. These purchases must be in compliance with Arizona Revised Statutes.

### **§ 39.26 [RESERVED]**

## **§ 39.27 ALLOWABILITY OF REIMBURSING COSTS.**

The city shall be governed by A.R.S. Title 41, Chapter 23, Article 7, Cost Principles, which establishes Code of Federal Regulations, 48 C.F.R., 31.000 et seq., as the measure of determining allocability of reimbursing costs under contract provisions which provide for the reimbursement of costs.

('76 Code, § 3-8-7) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

## **§ 39.28 SUPPLY MANAGEMENT.**

### **(A) *Central warehousing.***

- (1) There is hereby appropriated out of any money in the City Treasury an intragovernmental service fund which shall be known as the Storerooms Revolving Fund.
- (2) The Chief Procurement Officer shall control and supervise storerooms and warehouses, and shall administer the Storerooms Revolving Fund.

### **(B) *Inspection and testing.*** The Chief Procurement Officer shall develop and enforce procedures to ensure that deliveries of supplies or contractual services are inspected to determine their conformance with the specifications set forth in the order or contract.

### **(C) *Surplus Stock.*** All using agencies shall submit to the Chief Procurement Officer, at times and in form as he or she shall prescribe, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out, or scrapped.

- (1) The Chief Procurement Officer shall have the authority to transfer surplus stock to other agencies.
- (2) Subject to any restrictions placed by the original funding agency, the Chief Procurement Officer shall have the authority to sell all supplies, by sealed bid or auction, as hereinabove provided, which have become unsuitable for public use, or to exchange the same for, or trade in the same on, new supplies, or to sell the same to another political subdivision of the state at a price acceptable to both parties.
- (3) Sales under this section shall be made to the highest responsible bidder.
- (4) Donations.
  - (a) For items governed by this section which have an aggregate value of less than \$10,000, the Chief Procurement Officer, upon approval by the City Manager, may donate the same to another government entity or nonprofit organization, providing that it is determined that the donation is in the best interest of and contributes to the general welfare of the citizens of the city.
  - (b) For items governed by this section which have an aggregate value over \$10,000, the City Council, by resolution, may make a donation, providing that the City Manager determines in writing that the donation is in the best interest of and contributes to the general welfare of the citizens of the city.

### **(D) *Disposal of real property.*** The Chief Procurement Officer shall be responsible for the sale/disposition of real property in accordance with A.R.S. § 9-407.

('76 Code, § 3-8-8) (Ord. 903, passed 7-23-92; Am. Ord. 1005, passed 3-28-96; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.29 COOPERATIVE PURCHASING.**

Pursuant to A.R.S. § 41-2632 et seq., the city may participate in, sponsor, conduct, or utilize cooperative purchasing agreements for the procurement of any materials, services, or construction with one or more eligible agencies in accordance with an agreement entered into between the parties.

('76 Code, § 3-8-10) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08; Am. Ord. 2015-006, passed 8-13-15)

### **§ 39.30 SMALL AND DISADVANTAGED BUSINESSES POLICY.**

It is the policy of the city that disadvantaged business enterprises shall have the opportunity to participate to the maximum extent feasible in all required aspects of procurement and contracting in accordance with applicable statutes, regulations, and executive orders.

('76 Code, § 3-8-11) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

## **LEGAL AND CONTRACTUAL REMEDIES**

### **§ 39.40 AUTHORITY TO RESOLVE PROTESTED SOLICITATIONS AND AWARDS.**

- (A) *Right to protest.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Procurement Officer with appeal rights to the City Manager. The protest shall be submitted within 14 days after such aggrieved person knows, or should have known, of the facts giving rise thereto.
- (B) *Authority to resolve protests.* The City Manager shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.
- (C) *Decision.* If the protest is not resolved by mutual agreement, the City Manager shall promptly issue a decision in writing. The decision shall:
  - (1) State the reasons for the action taken; and
  - (2) Inform the protestant of its right to judicial or administrative review.
- (D) *Notice of decision.* A copy of the decision under subsection (C) of this section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.
- (E) *Finality of decision.* A decision under subsection (C) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision commences an action in a court of competent jurisdiction.



- (F) *Stay of procurements during protests.* In the event of a timely protest under division (A) of this section, the Chief Procurement Officer shall not proceed further with the solicitation or award of the contract, until the City Manager makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the city.
- (G) *Entitlement to costs.* In addition to any other relief, when a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but is not, then the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

('76 Code, § 3-8-9) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

#### **§ 39.41 AUTHORITY TO DEBAR OR SUSPEND.**

- (A) *Authority.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer, after consulting with the City Manager and City Attorney, may recommend that the City Manager debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three years. After consultation with the City Manager and City Attorney, the Chief Procurement Officer may recommend that the City Manager suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed six months.
- (B) *Causes for debarment or suspension.* The causes for debarment include:
- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract.
  - (2) Conviction, under state or federal statutes, for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a city contractor.
  - (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
  - (4) Violation of contract provisions, as set forth below, of a character regarded by the Chief Procurement Officer as so serious as to justify debarment action:
    - (a) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - (b) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.
  - (5) Any other cause the Chief Procurement Officer determines to be serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause listed in this chapter.
  - (6) Violation of the ethical standards as set forth in § 39.50 through 39.56 of this chapter.
- (C) *Decision.* Upon direction of the City Manager, the Chief Procurement Officer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken, and inform the debarred or suspended person involved of its rights concerning judicial or administrative review.

- (D) *Notice of decision.* A copy of the decision required by division (C) of this section shall be sent certified mail or otherwise furnished immediately to the debarred or suspended person.
- (E) *Finality of decision.* A decision under division (C) of this section shall be final and conclusive, unless fraudulent, or the debarred or suspended person files a written appeal with the City Manager within ten days after receipt of the decision, or commences a timely action in court in accordance with applicable law.

('76 Code, § 3-8-6) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

## **§ 39.42 AUTHORITY TO RESOLVE CONTRACT AND BREACH OF CONTRACT CONTROVERSIES.**

- (A) *Applicability.* This section applies to controversies between the city and a contractor, and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- (B) *Authority.* Prior to commencement of an action in a court concerning the controversy, the City Manager is authorized to settle and resolve a controversy described in subsection (A) of this section.
- (C) *Decision.* If such a controversy is not resolved by mutual agreement, the City Manager shall promptly issue a decision in writing. The decision shall:
  - (1) State the reasons for the action taken; and
  - (2) Inform the contractor of its right to judicial or administrative review.
- (D) *Notice of decision.* A copy of the decision under subsection (C) of this section shall be mailed or otherwise furnished immediately to the contractor.
- (E) *Finality of decision.* A decision under subsection (C) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision commences an action in court of competent jurisdiction.
- (F) *Failure to render timely decision.* If the Chief Procurement Officer, the City Manager, or the designee of either officer does not issue the written decision required under subsection (C) of this section within 120 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

## **ETHICS IN PUBLIC CONTRACTING**

### ***Part A. Standards of Conduct***

## **§ 39.50 GENERAL STANDARDS OF ETHICAL CONDUCT.**

- (A) *General ethical standards for employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the city employee's duties is a breach of a public trust.

- (B) *General ethical standards for non-employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section and § 39.52 through 39.56 of this article is also a breach of ethical standards.

(Ord. 2008-012, passed 6-12-08)

### **§ 39.51 CRIMINAL SANCTIONS.**

To the extent that violations of the ethical standards of conduct set forth in § 39.50 through § 39.56 of this chapter constitute violations of the State Criminal Code, they shall be punishable as provided therein. The penalties shall be in addition to the civil sanctions set forth in this subchapter. Criminal, civil, and administrative sanctions against city employees or non-employees which are in existence on the effective date of this chapter shall not be impaired.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.52 EMPLOYEE CONFLICT OF INTEREST.**

- (A) *Conflict of interest.* It shall be a breach of ethical standards for any city employee to participate directly or indirectly in a procurement contract when the city employee knows that:
- (1) The city employee or any member of the city employee's immediate family has a financial interest pertaining to the procurement contract;
  - (2) A business or organization in which the city employee, or any member of the city employee's immediate family, has a financial interest pertaining to the procurement; or
  - (3) Any other person, business, or organization with whom the city employee or any member of a city employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- (B) *Financial interest in a blind trust.* A city employee or any member of a city employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- (C) *Discovery of actual or potential conflict of interest, disqualification, and waiver.* Upon discovery of an actual or potential conflict of interest, a city employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. The city employee may, at the same time, apply to the City Manager, in accordance with § 39.57, for an advisory opinion as to what further participation, if any, the employee may have in the transaction.
- (D) *Employee disclosure requirements.*
- (1) *Disclosure of benefit received from contract.* Any employee who has, or obtains any benefit from, any city contract with a business in which the employee has a financial interest shall report such benefit to the Chief Procurement Officer, provided, however, this section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.
  - (2) *Failure to disclose benefit received.* Any employee who knows or should have known of such benefit, and who fails to report such benefit to the Chief Procurement Officer, is in breach of the ethical standards of this section.

### **§ 39.53 GRATUITIES AND KICKBACKS.**

- (A) *Gratuities.* It shall be a breach of ethical standards for any person to offer, give, or agree to give any city employee or former city employee, or for any city employee or former city employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.
- (B) *Kick back s.* It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.
- (C) *Contract clause.* The prohibition against gratuities and kickbacks prescribed in this subchapter shall be conspicuously set forth in every contract and solicitation therefor.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.54 CONTINGENT FEES PROHIBITED.**

It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.55 CONTEMPORANEOUS EMPLOYMENT PROHIBITED.**

It shall be a breach of ethical standards for any city employee who is participating directly in the procurement process to become or to be, while such a city employee, the employee of any person contracting with the city.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

### **§ 39.56 USE OF CONFIDENTIAL INFORMATION.**

For confidential information to be protected, respondents must clearly designate, in writing, any trade secrets or other proprietary information, using the term “confidential” within the quote, bid, or proposal responses, and the City must agree to keep such information protected, in accordance with Arizona State Law.

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.



('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

#### **§ 39.57 WAIVER FROM CERTAIN PROHIBITIONS.**

The City Manager may grant a waiver from the employee conflict of interest provision (§ 39.52 of this subchapter) or the contemporaneous employment provision (§ 39.55 of this subchapter), upon making a determination that:

- (A) The contemporaneous employment or financial interest of the city employee has been publicly disclosed;
- (B) The city employee will be able to perform his or her procurement functions without actual or apparent bias or favoritism; and
- (C) The award will be in the best interest of the city.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

#### ***Part B. Remedies***

#### **§ 39.60 CIVIL AND ADMINISTRATIVE REMEDIES AGAINST CITY EMPLOYEES WHO BREACH ETHICAL STANDARDS.**

- (A) *Existing remedies not impaired.* Civil and administrative remedies against city employees which are in existence on the effective date of this code shall not be impaired.
- (B) *Supplemental remedies.* In addition to existing remedies for breach of the ethical standards of this article, or regulations promulgated hereunder, the City Manager may impose disciplinary action up to and including termination of employment.
- (C) *Right to recovery from employee value received in breach of ethical standards.* The value of anything received by a city employee in breach of the ethical standards of this article, or regulations promulgated hereunder, shall be recoverable by the city as provided in § 39.62.
- (D) *Due process.* All remedies under this section shall be in accordance with due process requirements more specifically outlined in procedures established by the City Manager and existing law.

(Ord. 2008-012, passed 6-12-08)

#### **§ 39.61 CIVIL AND ADMINISTRATIVE REMEDIES AGAINST NON-EMPLOYEES WHO BREACH ETHICAL STANDARDS.**

(A) *Existing remedies not impaired.* Civil and administrative remedies against non-employees which are in existence on the effective date of this code shall not be impaired.

(B) *Supplemental remedies.* In addition to existing remedies for breach of the ethical standards of this article, or regulations promulgated hereunder, the City Manager may impose any one or more of the following:

- (1) Written warnings or reprimands;
  - (2) Termination of transactions; and
  - (3) Debarment or suspension from being a contractor or subcontractor under city contracts.
- (C) *Right to recovery from non-employee value transferred in breach of ethical standards.* The value of anything transferred in breach of the ethical standards of this article, or regulations promulgated hereunder, by a non-employee shall be recoverable by the city as provided in § 39.62.
- (D) *Right of the city to debar or suspend.* Debarment or suspension may be imposed by the City Manager, in accordance with the procedures set forth in § 39.41 for breach of the ethical standards of this article, provided that such action may not be taken without informing the City Attorney.
- (E) *Due process.* All remedies under this section shall be in accordance with due process requirements more specifically outlined in procedures established by the City Manager.

(Ord. 2008-012, passed 6-12-08)

#### **§ 39.62 RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS.**

- (A) *General provisions.* The value of anything transferred or received in breach of the ethical standards of this article by a city employee or non-employee may be recovered from either the city employee or non-employee.
- (B) *Recovery of kickbacks by the city.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city, and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

('76 Code, § 3-8-12) (Ord. 903, passed 7-23-92; Am. Ord. 2008-012, passed 6-12-08)

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